



Frequently Asked Questions and Answers: Clarification of Policy for Section 504 Issued by the Office for Civil Rights (OCR)

1. Q. What is ADD?

A. Attention Deficit Disorder (ADD) is a neurobiological disability. It is characterized by attention skills that are developmentally inappropriate, impulsivity, and in some cases, hyperactivity.

2. Q. Are all students with ADD automatically protected under Section 504?

A. **No.** Some students with ADD may have a disability within the meaning of Section 504; others may not. Students must meet the Section 504 definition of disability to be protected under the regulation. Under Section 504, a “person with disabilities” is defined as any person who has a physical or mental impairment that substantially limits a major life activity (e.g., learning). Thus, depending on the severity of their condition, students with ADD may or may not fit within that definition.

3. Q. Must students thought to have ADD be evaluated by school district/charters?

A. Yes. If parents believe that their student has a disability, whether ADD or any other impairment, and the school district/charter has reason to believe that the student may need special education or related services, the school district/charter must evaluate the student. If the school district/charter does not believe the student needs special education or related services, and thus does not evaluate the student, the school district/charter must notify the parents of their due process rights.

4. Q. Must school district/charters have a different evaluation process for Section 504 and the IDEA?

A. No. School district/charters may use the same process for evaluating the needs of students under Section 504 that they use for implementing IDEA.

5. Q. Can school district/charters have a different evaluation process for Section 504?

A. Yes. School district/charters may have a separate process for evaluating the needs of students under Section 504. However, they must follow the requirements for evaluation specified in the Section 504 regulation.

6. Q. *Is a student with ADD, who has a disability within the meaning of Section 504, but not under the IDEA, entitled to receive services?*

A. Yes. If a student with ADD is found to have a disability within the meaning of Section 504, he or she is entitled to receive any services the 504 team decides are necessary.

7. Q. *Can a school district/charter refuse to provide accommodations to a student with ADD because he or she does not meet the eligibility criteria under the IDEA?*

A. No.

8. Q. *Can a student with ADD, who is protected under Section 504, receive related aids and services in the general educational setting?*

A. Yes. Should it be determined that a student with ADD has a disability within the meaning of Section 504 and needs only adjustments in the general classroom, rather than special education, those adjustments are required by Section 504.

9. Q. *Must a school district/charter have a separate due process hearing procedure for Section 504 and the IDEA?*

A. No. School district/charters may use the same procedures for resolving disputes under both Section 504 and the IDEA. In fact, many local school district/charters and some State education agencies are conserving time and resources by using the same due process procedures. However, education agencies should ensure that hearing officers are knowledgeable about the requirements of Section 504.

10. Q. *Can school district/charters use separate due process procedures for Section 504?*

A. Yes. School district/charters may have a separate system of procedural safeguards in place to resolve Section 504 disputes. However, these procedures must follow the requirements of the Section 504 regulation.

11. Q. *What should parents do if the State due process hearing process does not include Section 504?*

A. Under Section 504, school district/charters are required to provide information and inform parents of these procedures. Thus, school district/charters are responsible for providing a Section 504 hearing even if the State process does not include it.

12. Q. *When do the second and third prongs of the Section 504 definition become relevant?*

Second Prong—Has a record of an impairment.

Third Prong—Is regarded as having an impairment.

A. **Section 504 teams should only use the first prong of the Section 504**

eligibility definition: A student may be considered disabled if the individual has a mental or physical impairment that substantially limits one or more of such person's major life activities. The second and third prongs were meant for situations where individuals are discriminated against based upon a record of an

impairment or being perceived and treated in a discriminatory manner. *Prongs two and three should not be used for eligibility purposes.* It is the negative action taken based on the perception of the record that entitles a person to protection against discrimination.

13. Q. Are slow learners eligible for Section 504 accommodations or services?

A. “Slow learning” is not a disability any more than giftedness would be considered an impairment. If a slow learner cannot cope with the general education, the problem is with the curriculum or instructional approach, not the student. The curriculum or instruction must be modified to meet the ability and pace of the student. It should be noted that the student could have a disability (for example, an attention deficit disorder) and also be a slow learner. The ADD could entitle the student to Section 504 services.

14. Q. Who should serve on the Section 504 Team?

A. A practice that has worked for many schools is the use of the intervention team or prereferral (EIT) team as the Section 504 Team. This team is usually knowledgeable about the student and is familiar with interventions that have been successful and strategies that have failed. The core team will usually include the following:

- A. Parent(s)
- B. Student, when appropriate
- C. Principal or designee
- D. Classroom teacher(s)
- E. School counselor
- F. Others as appropriate

15. Q. Can a school use the special education IEP form to document Section 504 accommodations and services? Can a student have both a Section 504 Plan and an IEP?

A. **No, in both cases.** If a student is eligible to receive accommodations under Section 504, they should be documented on a Section 504 Accommodation Plan. Students with IEPs have all their needs (academic, behavioral, related services, supplemental services and accommodations) addressed via an IEP.

16. Q. Should each eligible Section 504 student have a case manager?

A. **Yes.** After determining eligibility, the Section 504 team should appoint a case manager to ensure the services are implemented and to manage the Section 504 file. If the student transitions to a new level or building, a new case manager will need to be assigned. The case manager is usually the primary service provider. Typical case managers include school counselors, general education teachers, and school nurses.

17. Q. How does free appropriate public education differ in Section 504 and special education?

A. In special education, a student must be eligible under one of the IDEA's disability categories and requires special education before he/she is entitled to related services. The definition for eligibility under Section 504 is very broad and could include any physical or mental impairment that substantially limits a major life activity. The impairment must be shown to impact the student's education program. The student could receive accommodations, and/or related services. Some students could receive just a related service, such as physical therapy or school counseling.

18. Q. *Who conducts school evaluations to determine Section 504 eligibility?*

A. Many students who are eligible for Section 504 services have medical conditions that have already been diagnosed. In these cases the school would request permission from the parents to obtain copies to document the Section 504 eligibility. In many cases, the student is referred for an evaluation under special education but is not found to be eligible. That evaluation can be used for Section 504 consideration. In cases where the school conducts the evaluation, special education staff or other support staff may be involved. Most schools pay a portion of the salary and benefits of special education staff and could justify the use of these individuals to conduct 504 evaluations.

19. Q. *When a student exits special education should they be considered for Section 504 eligibility?*

A. **Yes.** Many exiting special education, students will not require Section 504 accommodations or services. If the students IEP team decides upon exiting the student that Section 504 eligibility should be considered, a referral would be made to the EIT to determine if 504 eligibility or other interventions should be considered. Special education students who are graduating from high school and moving on to post secondary opportunities should be considered for Section 504 services. Post secondary programs receiving federal funds are under the same obligations as schools.

20. Q. *Where can parents or the school receive technical assistance regarding Section 504 issues?*

A. There are several sources of technical assistance for parents and school, including the following:

1. School Section 504 coordinator
2. Regional Office for Civil Rights, Denver, Colorado

21. Q. *To what extent should parents be involved in the Section 504 process?*

A. The Section 504 regulations do not specify the degree of parent participation. It is always best practice to involve parents every step along the way in their student's educational program. It is recommended that parents receive notice whenever their student is singled out for evaluation, eligibility or service delivery. Written consent must be obtained prior to evaluation and placement. The parents should be invited to participate in all Section 504 meetings regarding their student.

22. Q. *Can the Section 504 team recommend alternatives to an eligible student's graduation requirements?*

A. **Yes.** For example, a student with a severe physical disability might not be able to participate and fulfill physical education graduation requirements. Adapted physical education would be a modification for the physical education requirement. Schools are encouraged to develop alternative options rather than totally waive a course requirement.

23. Q. *Are all students with attention deficient disorder eligible for Section 504 services?*

A. Although many students who have been diagnosed with ADD/ADHD **do** qualify for Section 504 services, many others do not. Many students who have been diagnosed with ADD/ADHD are either on medication or have been taught and apply compensatory skills to successfully function in a school environment and may not require Section 504 services. Some students with ADD/ADHD will be eligible for special education services if they were first found to be eligible for special education under the categories of learning disability, other health impaired, emotionally disturbed, or traumatic brain injury. If the student has a mental or physical disability that substantially limits a major life activity (in the case of ADD/ADHD, learning), then the student would qualify for Section 504 accommodations and/or services if an evaluation supports that determination.

24. Q. *What are the consequences for a school that refuses to meet Section 504 obligations?*

A. Mediation should be used whenever possible to assist in resolving disputes between parents in the school. The parents could file a local grievance with the school, request a due process hearing, take the school to court, or file a complaint with the Office for Civil Rights. OCR is part of the U. S. Department of Education.

25. Q. *Should a school document and keep a Section 504 file on each eligible student?*

A. It is best practice to document the events of each Section 504 service. Files should be kept on eligible students and maintained by the case manager. These files should be separate from the cumulative files to avoid possible discrimination based on the record. Section 504 files would be under all requirements listed in the Family Educational Rights and Privacy Act (FERPA).

26. Q. *Who pays the costs for Section 504 services?*

A. Schools are responsible to fund this mandate. Federal and State special education funds **should not** be used for Section 504 services.

27. Q. *Are private schools responsible to provide Section 504 requirements?*

A. Yes, if the private school (including preschool) is receiving any form of federal funding.

28. Q. Can a school require a medical statement for students for whom they cannot pinpoint a medical or physical impairment that is substantially limiting a major life activity within the school and for which assistance is needed in the school?

A. A school cannot require a parent or student to provide a medical statement if the school suspects that the student has a disability that would necessitate the provision of general or special education and related aids and services under the regulations implementing Section 504 of the Rehabilitation Act of 1973. However, a school is not required to evaluate a student who the school does not believe has a disability (e.g., a mental or physical impairment that substantially limits a major life activity, such as learning). A school is required to conduct an evaluation of any person whom, because of disability or needs, the school believes to need general or special education and related aids and services before placing the person in general special education with related aids and services. If a school determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to make an appropriate evaluation consistent with 34 CFR Section 104.35 (a) and (b), the school must ensure that the student receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, these methods may be used in lieu of a medical assessment. If a district/charter does not believe that a student has a disability and refuses to evaluate the student, the district/charter must inform the parents of their due process rights under 34 CFR Section 104.36.

29. Q. Are schools required to provide food when dietary modifications are needed? Or do parents provide the food and have the school prepare it (as is the case with medication)?

A. It depends. A school, in providing any aid, benefit, or service, may not deny or afford a person with a disability an opportunity to participate in, or benefit from, an aid, benefit, or service, such as the provision of food services, that is not equal to, or as effective as, that provided to persons without disability. The school is also required to provide free appropriate public education to each qualified person with a disability. Unlike medicine, which the school is not required to provide for any student, if the school provides food to students generally, it would also have to provide an appropriate lunch to the student with disabilities who has special dietary needs on the same basis that food is provided to students without disabilities. Depending on the circumstances, the school may have to provide special foods to meet the individual needs of the student with disabilities. This responsibility is determined on a case-by-case basis.

30. Q. Do school responsibilities under Section 504 also include providing services to students in private schools?

A. If a school has made available a free appropriate public education to a person with a disability and the person's parent or guardian chooses to place the person in a private school, Section 504 does not require the recipient to receive services in the private school unless that private school receives federal funding. (34 CFR Section 104.33(c)(4)). The private, rather than the public, school provides and

pays for Section 504 services when it provides the services because it is a recipient of federal funds.

31. Q. *For students who are referred to special education, but do not qualify under IDEA criteria, do they automatically become Section 504 students?*

A. **No.** Under Section 504, a “person with disabilities” is defined as any person who has a physical or mental impairment that substantially limits a major life activity. Thus, depending on the severity of their condition, students who do not meet the standards under the Individuals with Disabilities Education Act (IDEA) may or may not fit within the Section 504 definition.

32. Q. *Can a student be identified as IDEA eligible and be receiving some services under IDEA and also be identified as a Section 504 student and be receiving different assistance in the general classroom under Section 504?*

A. **No.** In order to be eligible for services under the IDEA, a student must be found to have one or more of the disability categories specified *and* must also be found to need special education (specially-designed instruction). A student identified as IDEA eligible and receiving services under the IDEA receives a free appropriate public education through an individualized education program (IEP) developed in accordance with IDEA—**not** through a Section 504 Accommodation Plan.

33. Q. *If a student is identified as in need of accommodations under Section 504, and the parent decides to home-school the student, is the school still responsible for providing services in the home for the student because they are in the jurisdictional area of the school’s responsibility?*

A. **No.** Where a school has offered an appropriate education, a school is not responsible, under Section 504, for the provision of educational services to students not enrolled in the public educational program based on the personal choice of the parent or guardian.

34. Q. *If a Section 504 student is, due to his/her disability, constantly disruptive on the school bus, can the school have the student’s bus privileges removed if she/he needs the transportation to get to school? If so, must the school still provide transportation? How about when the student is a threat to the safety of other students on the bus?*

A. If transportation is a related service for a student with disabilities, any incident of misconduct on the bus should be viewed in the same manner as any disciplinary incident in the school. A school cannot revoke transportation services just as a school could not suspend a student with disabilities in excess of 10 days or, in some cases, impose cumulative suspensions exceeding 10 days, without taking a number of prior actions. A school can change the mode or method of providing transportation services if a student with disabilities is endangering himself or others, just as the school can place a student with disabilities in a more restrictive setting if the student becomes dangerous.

For other Questions and Answers from OCR, go to
<http://www.ed.gov/about/offices/list/ocr/504faq.html>